

U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

1. (a) Name and location of court that entered the judgment of conviction you are challenging: ST. LOUIS 22nd JUDICIAL CIRCUIT
- (b) Criminal docket or case number (if you know): 951-4205A
2. (a) Date of the judgment of conviction (if you know): 1-24-1997
- (b) Date of sentencing: 2-28-97
3. Length of sentence: 240 years
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: 3 robbery 1st, 3 attempt robbery, 8 arm criminal action
2 assault 1st, 1 kidnapping.
6. (a) What was your plea? (Check one)
- (1) Not guilty ☒ (3) Nolo contendere (no contest) ☐
- (2) Guilty ☐ (4) Insanity plea ☐
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? plead not guilty to all charges

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Court of Appeals Eastern District

(b) Docket or case number (if you know): 72164

(c) Result: affirmed

(d) Date of result (if you know): March 24, 1998

(e) Citation to the case (if you know): State v. Bostic, 963 S.W.2d 720

(f) Grounds raised: insufficient evidence of charges 12 to 16
judge should have recused sua sponte from sentencing

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: 22nd judicial court division 6

(2) Docket or case number (if you know): #3807

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: 29.15 post-conviction motion

(5) Grounds raised: _____

ineffective assistance of counsel

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: conviction affirmed

(8) Date of result (if you know): 2-2000

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

attorney choose not to appeal

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: 240 year sentence given to 16 year old
juvenile for nonhomicide cruel & unusual Graham v. Florida

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED PAGES

- (b) If you did not exhaust your state remedies on Ground One, explain why: _____

I exhausted my state remedies

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: _____

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: state habeas corpus

Name and location of the court where the motion or petition was filed: _____

MISSOURI SUPREME COURT

FACTS REGARDING 28 U.S.C. §2254(D)(1)

This court may grant Petitioner's application for a writ of Habeas Corpus because the adjudication of this claim in State court resulted in a decision that was contrary to clearly established Federal law, as determined by the Supreme Court of the United States, in that:

1) Petitioner was sentenced to a total of 240 years for non-homicide offences committed as a juvenile and is not eligible for parole until the year 2091, when statistically he would be dead at 112 years old. (See Exhibit 1)

2) Petitioner presented to the Circuit Court of Texas County, Missouri; Missouri Court of Appeals, Southern District; and the Supreme Court of Missouri the claim that:

Petitioner's sentences for non-homicide offences, committed as a juvenile, that do not provide him with some realistic opportunity to obtain release before the end of his life, are in violation of the Eighth Amendment to the United States Constitution's ban on cruel and unusual punishment.

3) In support of Petitioner's claim in the State's courts Petitioner cited Graham v. Florida, 130 S. Ct. 2011 (2010), which held that:

"The Constitution prohibits the imposition of a life without

parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term."

4) The Circuit Court of Texas County, Missouri: Missouri Court of Appeals, Southern District; and the Supreme Court of Missouri, after considering Petitioner's claim on the merits, rejected the claim, and thereby rendered a decision that was contrary to clearly established Federal law, as determined by the Supreme Court of the United States in Graham v. Florida, 130 S. Ct. 2011 (2010).

Time 13:42:44

BOARD OF PROBATION AND PAROLE

Date 5/26/11

DOC ID: 526795 Cycle: 19970303
 DOC Name: BOSTIC, BOBBY

Institution/Housing Unit SCCC/006

Minimum Mandatory Release Date 01/05/2091

RELATING TO RELEASE CONSIDERATION

- ☒ 1. You have been scheduled for a parole hearing 01/00/2089.
- ☐ 2. At your request, your case has been closed to further parole consideration.
- ☐ 3. You have been given parole consideration in a parole hearing. You will be scheduled for a reconsideration hearing.
- ☐ 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

☐ Guideline ☐ Below Guideline ☐ Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- ☐ 5. Your previously set release date has been cancelled.
- ☐ 6. Your conditional release date has been extended to .
- ☐ 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- ☐ 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

****THIS DECISION IS NOT SUBJECT TO APPEAL.**

MPT Review.

Hearing rescheduled.

Time - 13:42:44

BOARD OF PROBATION AND PAROLE

Date - 5/26/11

DOC ID: 526795 Cycle: 19970303

DOC Name: BOSTIC, BOBBY

If you have any questions regarding this decision, please contact
your Institutional Parole Officer.

JEH JEH /BAL (Date Created: 05/26/11)

Jeremiah W. (Jay) Nixon
Governor



George A. Lombardi
Director

State of Missouri
DEPARTMENT OF CORRECTIONS

Board Of Probation And Parole
Ad Excelleum Conamur – "We Strive Towards Excellence"

DATE: November 16, 2011

TO: Offender Bobby Bostic #526795
HU#5A-216

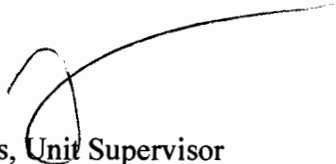
FROM: Nya Rogers, Unit Supervisor

SUBJECT: Response to Your Letter

Your letter to Ellis McSwain, Board of Probation and Parole Chairman, has been referred to me for response. Under the Edger Rule, your Minimum Eligibility has been calculated correctly. Missouri State Statute 558.019 states any sentence alone or with other consecutive sentences that total over 75 years for offenses that occurred at or near the same time shall be calculated to be 75 years. In 1997, the Board determined these offenses didn't occur "at or near the same time." Based on the Edger decision and the rules approved by Legal Counsel the 75 year rule can be applied to Sequences 1-14, but not to Sequences 15-17. You also fall under the 70 years of age rule, which states that you can become eligible for parole once you have turned 70 years old and have served 40% of your sentence. You will have served 40% of 75 years on 12-12-2025 and will turn 70 on 1-5-2049. So, on Sequences 1-14, your Minimum Prison Term date is 1-5-2049. This must then be added to the statutory requirements for your Armed Criminal Action cases. You must serve 3 years on each Armed Criminal Action case per Missouri State Statute. You have 8 Armed Criminal Action cases. That is a total of 24 years you must serve on those. You are required to serve 40% each on Sequence 15 and Sequence 17 since you will be over 70 years old, which is 12 years on Sequence 15 and 6 years on Sequence 17. If you add the required 42 years from Sequences 15-17 to the Minimum Prison Term date of 1-5-2049 for Sequences 1-14, you will get Minimum Prison Term date of 1-5-2091. Your first Parole Hearing will be held approximately two years prior to that date in January 2089.

I hope this resolves your issue.

Sincerely,


Nya Rogers, Unit Supervisor
South Central Correctional Center Parole Office

Cc: File

Docket or case number (if you know): SC9190

Date of the court's decision: August 30, 2011

Result (attach a copy of the court's opinion or order, if available): _____

SEE ATTACHED RULING

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

EIGHTH CIRCUIT COURT OF APPEALS

Docket or case number (if you know): 11-2970

Date of the court's decision: October 25, 2011

Result (attach a copy of the court's opinion or order, if available): granted appeal

SEE ATTACHED

The Eighth Circuit granted me permission to file a successive application

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

Habeas Corpus in at all levels in STATE COURT

RECALL MANDATE IS COURT OF APPEALS DENIED 10-2011

GROUND TWO: _____

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.):

In the Supreme Court of Missouri

May Session 2011

State ex rel. Bobby Bostic,

Relator,

No. SC91910 **HABEAS CORPUS**
Texas County Circuit Court No. 11TE-CC00177
Southern District Court of Appeals No. SD31467

Michael Bowersox,

Respondent.

Now at this day, on consideration of the petition for writ of habeas corpus herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Bill L. Thompson, Interim Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full and complete transcript of the judgment of said Supreme Court, entered of record at the May Session thereof, 2011, and on the 30th day of August, 2011, in the above-entitled cause.

WITNESS my hand and the Seal
of the Supreme Court of Missouri,
at my office in the City of Jefferson
this 30th day of August, 2011.

Bill L. Thompson

Interim Clerk

Kathy K. Fitchall

Deputy Clerk

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 11-2970

Bobby Bostic

Petitioner

v.

Michael Bowersox

Respondent

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis

JUDGMENT

Before LOKEN, MELLOY, and SHEPHERD, Circuit Judges.

The petition for authorization to file a successive habeas application in the district court is granted.

The mandate shall issue forthwith.

October 25, 2011

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

Federal Habeas Corpus in this court, case #001969FRB,
insufficient evidence, judicial bias, jury bias, denied September 2003.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: Richard Moran (deceased)

(d) At sentencing: Richard Moran (deceased)

(e) On appeal: Nancy Vincent

(f) In any post-conviction proceeding: Douglas Hoff

(g) On appeal from any ruling against you in a post-conviction proceeding: Douglas Hoff

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* _____

THE EIGHTH CIRCUIT COURT OF APPEALS GAVE PERMISSION
TO FILE A SUCCESSIVE APPLICATION IN THIS COURT UNDER
2244 [b][2][A]

GRAHAM V. FLORIDA 130 S.Ct. 2011 [2010] applies
retroactive to petitioner as substantial law that
prohibits the state court from giving him as 16 year
old juvenile a sentence that equals life without
parole and does not allow him a meaningful
opportunity of parole within his lifetime for
non-homicide crimes. Such sentences are now
prohibited by the Eighth Amendment to the
United States Constitution.

(see attached Memorandum In Support of Law)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief:

Remand to the trial court for a new sentence
hearing

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

December, 12, 2011 (month, date, year).

Executed (signed) on 12-12-2011 (date).



Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

United States District of Missouri

[Insert appropriate court]

* * * * *

CERTIFICATE OF SERVICE

I certify that on December 12, 2011 a copy of the foregoing was mailed to Attorney General Chris Koster at P.O. BOX 899 Jefferson City, MO. 65102.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Bobby Bostic", is written over a horizontal line.

Bobby Bostic

Bobby Bostic 526795

SCCC

255 West Highway 22

Licking, MO. 65542